

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

SHANE BRADLEY,

Petitioner,

v.

STATE OF WISCONSIN,

Respondent.

ORDER

07-cv-325-bbc

On August 31, 2007 Judge Shabaz dismissed petitioner Shane Bradley's petition for a writ of coram nobis. On May 15, 2008, the Court of Appeals for the Seventh Circuit vacated this decision and remanded the case to this court with instructions to dismiss it for lack of subject matter jurisdiction. As an initial matter, I note that in the time this case was on appeal, Judge Shabaz has taken a leave of absence from the court to attend to a shoulder injury. In his absence, I have assumed jurisdiction over the case. Therefore, the case has been reassigned to me.

The court of appeals determined that Judge Shabaz should have construed petitioner's motion as one brought under 28 U.S.C. § 2255 because it was filed in the sentencing court and attacked the constitutionality of his sentence. Construing it properly would make it a

second collateral attack for which petitioner required prior permission from the court of appeals permission to proceed. Nunez v. United States, 96 F.3d 990, 991 (7th Cir. 1996). Because petitioner had not received it, this court lacked jurisdiction to consider the petition.

ORDER

IT IS ORDERED that petitioner Shane Bradley's motion is construed as one brought under 28 U.S.C. § 2555 and is DISMISSED for lack of subject matter jurisdiction because it is a second or successive post conviction attack and petitioner has not obtained the permission of the court of appeals for filing

Entered this 22nd day of September, 2008.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge